

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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CRWP No.1073 of 2020.

Date of Decision: 09.07.2020.

Avinash @ Golu

....Petitioner.

Versus

State of Punjab and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Onkar Rai, Advocate for petitioner.

Mr. H.S. Sitta, Assistant Advocate General, Punjab.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing due to Covid-2019.

This criminal writ petition under Article 226 of the Constitution of India read with Section 3 (1) (b) & (d) of The Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter to be referred as “Act, 1962”) is for issuance of a writ in the nature of certiorari for quashing order dated 17.08.2019 (Annexure P/2) rendered by respondent No.4-District Magistrate-cum-Deputy Commissioner, Kapurthala, vide which request for grant of parole to the petitioner for a period of six weeks, has been declined.

The petitioner has been convicted for the commission of offence punishable under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, “NDPS Act”) in case FIR No.29 dated 05.04.2017 under Section 22 of NDPS Act, registered at Police Station

Satnampura, Phagwara, District Kapurthala, vide judgment of conviction and order of sentence both dated 02.07.2018 and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay fine of Rs.1,00,000/- and in case of default of payment of fine to further undergo rigorous imprisonment for one year.

Petitioner has impugned the legality of judgment of conviction and order of sentence both dated 02.07.2018, vide criminal appeal bearing CRA-S-3753-SB-2018, which is pending adjudication before this Court.

Learned counsel for the petitioner *inter alia* contends that application for grant of parole for six weeks moved by the petitioner was wrongly declined by respondent No.4 stating the reason that five FIRs have already been registered against him and, thus, he is habitual to commit heinous crimes. He further urges that as a matter of fact at the relevant time father of petitioner was suffering from acute illness and immediately after disposal of application for parole, he (father of petitioner) expired on 21.09.2019, as is evident from Death Certificate (Annexure P/3), which fact shows *bona fide* in the cause of petitioner. He further urges that denial of temporary release on parole to the petitioner, vide impugned order dated 17.08.2019 suffers from material illegality and, therefore, same may be set aside and the petitioner may be ordered to be released on six weeks parole as his father has expired and further sufficient cause has accrued in his favour to look after his family.

On the other hand, learned State counsel while opposing the cause of petitioner has vehemently argued that since petitioner is having criminal background, his application for grant of six weeks parole was rightly rejected by respondent No.4 and, thus, instant petition being devoid

of merit may be dismissed.

For ready reference, Section 3 (1) of Act, 1962, is reproduced here as under:-

“3. Temporary release of prisoners on certain grounds:-

(1) The State Government may, in consultation with the District Magistrate and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoner if the State Government is satisfied that:-

- (a) a member of the prisoner's family has died; or*
- (aa) husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grand-son or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or*
- (b) the marriage of the prisoner's son or daughter is to be celebrated or;*
- (c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation (on his land or any other land cultivated by him) and no friend of the prisoner or a member of the prisoner's family is prepared to help him in this behalf in his absence; or*
- (cc) a lady prisoner is pregnant and is likely to deliver a child; or*
- (d) it is desirable so to do for any other sufficient cause.”*

Though vide impugned order dated 17.08.2019, respondent No.4 had tried to depict petitioner as 'hardcore prisoner' but a bare perusal of definition of term 'hardcore prisoner' as explained in Section 2 (aa) (i) and (ii) of Act, 1962, petitioner cannot be categorized as 'hardcore prisoner' as he was not convicted for the commission of offence punishable under Section 376 read with Section 302 IPC or for an offence punishable under

Section 14 of the Protection of Children from Sexual Offences Act, 2012.

As a matter of fact, petitioner has been convicted and sentenced for the commission of offence punishable under Section 22 of NDPS Act and he has already undergone sentence of approximately 2½ years till date as is evident from custody certificate dated 19.09.2019 (Annexure P/1) issued by Deputy Superintendent, Central Jail, Kapurthala.

Apart from above, observations made by respondent No.4 that petitioner is habitual to commit heinous crimes as five case FIRs have been registered against him, this fact does not hold ground as admittedly in case FIR No.7 dated 14.02.2012 under Sections 399 and 402 IPC, Police Station Satnampura, Phagwara, FIR No.8 dated 14.02.2012 under Section 25 of Arms Act, Police Station Satnampura, Phagwara, FIR No.19 dated 31.03.2013 under Sections 323, 324, 427 and 452 IPC, Police Station Satnampura, Phagwara and FIR No.27 dated 20.05.2013 under Sections 148, 307, 323 and 324 IPC read with Section 149 IPC, Police Station Phagwara, he has already been acquitted of charges levelled against him, whereas in case FIR No.1 dated 01.01.2016 under Section 22 of NDPS Act, Police Station City, Phagwara, he has already been convicted and sentenced to rigorous imprisonment of seven months which sentence has already been undergone by him. In this scenario, observations made by respondent No.4 that petitioner is involved in number of cases and that too of heinous crimes, said aspect has no footing to stand as in most of those cases he has been acquitted of charges levelled against him and that too well prior to the passing of impugned order.

A bare perusal of the record, it appears that at the time of presentation of application seeking parole, father of petitioner was seriously

ill as after passing of impugned order on 17.08.2019, he expired on 21.09.2019. In this manner, case of petitioner was well covered by clause (aa) of sub-section (1) of Section 3 of Act, 1962, at the relevant time. After the death of father of petitioner, ground as mentioned in clause (a) of sub-section (1) of Section 3 of Act, 1962 also became available to the petitioner. Clause (d) of sub-section (1) of Section 3 of Act, 1962, envisages that temporary release of prisoner can also be effected for any other 'sufficient cause'.

In view of above, impugned order dated 17.08.2019 rendered by respondent No.4 while declining claim of petitioner suffers from material illegality and is liable to be set aside.

As a sequel to above, instant petition is allowed and resultantly petitioner is ordered to be released on six weeks parole w.e.f. 11.07.2020 on furnishing personal bond in the sum of Rs.1,00,000/- with one sound surety in the likewise amount to the satisfaction of Superintendent, Central Jail, Kapurthala and on culmination of parole period, he shall surrender before Superintendent, Central Jail, Kapurthala, on 22.08.2020 at 10:00 AM.

A copy of this order be sent by e-mail to learned District and Sessions Judge, Kapurthala, learned State counsel and Superintendent, Central Jail, Kapurthala, for information/requisite compliance.

(LALIT BATRA)
JUDGE

09.07.2020

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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No